

NEIL ABERCROMBIE
GOVERNOR



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No. _____

**TESTIMONY ON HOUSE BILL 1071
RELATING TO MENTAL HEALTH RELEASE ON CONDITIONS
OF A PERSON FOUND UNFIT TO STAND TRIAL**

by

Jodie F. Maesaka-Hirata, Interim Director
Department of Public Safety

House Committee on Judiciary
Representative Gilbert S.C. Keith-Agaran, Chair
Representative Karl Rhoads, Vice Chair

Thursday, February 3, 2011, 2:00 PM
State Capitol, Conference Room 325

Representative Keith-Agaran, Representative Rhoads, and Members of the
Committee:

The Department of Public Safety (PSD) cannot support the intent of House Bill 1071 because in accordance with HRS 708-814(1) (b), when the Court has determined a pretrial offender is "Unfit to Stand Trial", all proceedings are suspended and the individual's custody is then committed to the Director of Health. The offender is no longer under the jurisdiction of PSD.

Therefore, the Department of Health's (DOH) treatment plan to release the individual into the community under HRS 708-406, should be worked out between the DOH and the Judiciary.

One, we strongly believe the Court's purpose to commit the offender to the custody of the Director of Health, as it is stipulated in its order, is to place the

person "in the appropriate institution for detention, care and treatment." Two, we also contend to release an offender who is deemed to be unfit to proceed, places the safety of the community in jeopardy, and is contrary to the Department's fundamental mission to protect the welfare of the community. Finally, we do not have the staff or expertise to provide case management to clients with severe and persistent mental illness.

On behalf of the Department and the community we serve, thank you for the opportunity to provide testimony on this serious matter.

HAWAII DISABILITY RIGHTS CENTER

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THE HOUSE OF REPRESENTATIVES THE TWENTY-SIXTH LEGISLATURE REGULAR SESSION OF 2011

Committee on Judiciary

Testimony in Support of H.B. 1071

Relating to Mental Health Release On Conditions Of A Person Found Unfit To Stand Trial

**Thursday, February 3, 2011, 2:00 P.M.
Conference Room 325**

Chair Keith-Agaran and Members of the Committee:

I am Louis Erteschik, Staff Attorney at the Hawaii Disability Rights Center, and am testifying in support of this bill.

The purpose of this bill is to enhance the monitoring and the conditions under which a person may be released into the community after being found unfit to proceed to trial. Most individuals who fall into that category are sent to the Hawaii State Hospital. However, the statute does allow the Court the option, if the person is found to be not dangerous and not to pose a public safety risk, to release the individual into the community. Evidently, this is rarely utilized.

One of the reasons for the underutilization of this option is that the monitoring and reporting mechanisms for this individual are unclear. Justifiably, a Court may be reluctant to release an individual if there is a genuine concern that inadequate monitoring and supervision will occur. However, if these concerns were satisfied, it would increase the likelihood of a Court entering such an Order.

That would serve two basic purposes. First, it would alleviate some of the overcrowding that currently exists at the Hawaii State Hospital. While it was at one time intended to serve as the major institution for mental health treatment in our state, it has become a forensic facility to the point that no individual can be admitted except via Court order. This has created a large gap in our overall system of mental health delivery and

treatment. There are individuals in our state who might otherwise need to be at the State Hospital and could benefit from treatment at the facility. However, lack of bed space precludes them from admission. Housing individuals who have been found unfit to proceed, while they may attempt fitness restoration, may not represent the highest and best utilization of the state hospital.

The other purpose is that such individuals, if they are truly unfit to proceed, have by definition not been adjudicated of a criminal offense. They are still in a pretrial status. So, there is an inequitable feature about essentially incarcerating these people. As noted in our testimony on HB 1069, these individuals, if not restored to fitness, can spend an indefinite amount of time in a locked facility. If they were placed in the community at this earlier stage, then their basic freedoms and civil rights could be preserved.

Our review of the data from the state hospital indicates that fully 60% of the individuals housed there in this status have been charged with misdemeanors and petty misdemeanors. These individuals could safely be released without posing a risk to the public.

For all those reasons, this bill is very sensible from the perspective of conserving penal resources as well as appropriate, humane treatment towards individuals with disabilities.

Thank you for the opportunity to testify in support of this measure.